

9-408 Plea and disposition agreement.

[For use with District Court Rule 5-304 NMRA]

STATE OF NEW MEXICO

COUNTY

JUDICIAL DISTRICT

No. _____

STATE OF NEW MEXICO

v.

_____, Defendant

DOB: _____

SSN: _____

PLEA AND DISPOSITION AGREEMENT¹

The State of New Mexico and the defendant hereby agree to the following disposition of this case:

Plea:

The defendant agrees to plead [guilty] [no contest] to the following offenses:

_____.

Terms:

This agreement is made subject to the following conditions:²

1. **No agreement as to sentence.** There are no agreements as to sentencing. The mandatory minimum penalties, maximum possible penalties, and possible sentence enhancements are as follows: _____
(set forth possible penalties).
2. **Additional charges.** The following charges will be dismissed, or if not yet filed, shall not be brought against the defendant³: _____

_____.
3. **Restitution.** The defendant agrees to pay restitution as follows: _____
_____.

4. **Effect on charging document.** That this agreement, unless rejected or withdrawn, serves to amend the complaint, indictment, or information to charge the offense to which the defendant pleads, without the filing of any additional pleading. If the plea is rejected or withdrawn, the original charges are automatically reinstated.
5. **Waiver of defenses and appeal.** Unless this plea is rejected or withdrawn, the defendant gives up any and all motions, defenses, objections or requests which the defendant has made or raised, or could assert hereafter, to the court's entry of judgment and imposition of a sentence consistent with this agreement. The defendant waives the right to appeal the conviction that results from the entry of this plea agreement.
6. **Withdrawal permitted if agreement rejected.** If after reviewing this agreement and any presentence report the court concludes that any of its provisions are unacceptable, the court will allow the withdrawal of the plea, and this agreement will be void. If the plea is withdrawn, neither the plea nor any statements arising out of the plea proceedings shall be admissible as evidence against the defendant in any criminal proceedings.

I understand that entry of this plea agreement may have an effect upon my immigration or naturalization status, and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the immigration consequences of this plea agreement.

(Domestic violence or felony cases only) I understand that an entry of a plea for a crime of domestic violence or felony will affect my constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence.

I understand that entry of this plea agreement may require me to register as a sex offender under the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978] and I acknowledge that, if I am represented by an attorney, my attorney has advised me of the requirement to register. []
(check here if inapplicable)

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest] I will be giving up my right to a trial by jury, to confront, cross-examine and compel the attendance of witnesses and my privilege against self-incrimination.

I understand that if the court grants me probation, a suspended sentence, a deferred sentence or a conditional discharge, the terms and conditions thereof are subject to modification in the event that I violate any of the terms or conditions imposed.

Date

Defendant

DEFENSE COUNSEL REVIEW

I have reviewed the plea and disposition agreement with my client. I have discussed this case with my client and I have advised my client of my client's constitutional rights and possible defenses.

Defense counsel

Date

PROSECUTOR REVIEW

I have reviewed and approve this plea and disposition agreement and find that it is appropriate and consistent with the best interests of justice.

Prosecutor

Date

DISTRICT COURT APPROVAL

The defendant personally appearing before me and I have concluded as follows:

1. That the defendant understands the charges set forth in the [complaint] [information] [indictment].
2. That the defendant understands the range of possible sentences for the offenses charged, from probation to a maximum of _____.
3. That the defendant understands the following constitutional rights which the defendant gives up by pleading [guilty] [no contest]:
 - (a) the right to trial by jury, if any;
 - (b) the right to the assistance of an attorney at trial, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
 - (c) the right to confront the witnesses against the defendant and to cross-examine them as to the truthfulness of their testimony;
 - (d) the right to present evidence on the defendant's own behalf, and to have the state compel witnesses of the defendant's choosing to appear and testify;
 - (e) the right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.
4. That the defendant wishes to give up the constitutional rights of which the defendant has

been advised.

5. That there exists a basis in fact for believing the defendant [is guilty of] [committed] the offenses charged and that an independent record for such factual basis has been made.
6. That the defendant and the prosecutor have entered into a plea agreement and that the defendant understands and consents to its terms.
7. That the plea is voluntary and not the result of force, threats or promises other than a plea agreement.
8. That under the circumstances, it is reasonable that the defendant plead [guilty] [no contest].
9. That the defendant understands that a conviction may have an effect upon the defendant's immigration or naturalization status and that, if the defendant is represented by counsel, the defendant has been advised by counsel of the immigration consequences of the plea.
10. That the defendant understands that a conviction may require the defendant to register as a sex offender under the Sex Offender Registration and Notification Act and that if the defendant is represented by counsel, the defendant has been advised by counsel of the requirement to register.

On the basis of these findings, I conclude that the defendant knowingly, voluntarily and intelligently pleads [guilty] [no contest] to the above charges and accepts such plea. These findings shall be made a part of the record in the above-styled case.

District Judge

Date

USE NOTE

1. This form is used instead of Form 9-406 NMRA if there is a plea agreement. This form is not used for conditional plea. *See* Criminal Form 9-408C NMRA if there is a conditional plea.

2. If the plea agreement is not made in exchange for a guaranteed, specific sentence, this paragraph should state as follows: "The State agrees to recommend the following sentence _____ - or agrees not to oppose the defendant's request for a particular sentence, and the defendant understands that the court is not bound to those recommendations or requests and may sentence the defendant to a more unfavorable disposition."

3. This paragraph is used if there are other pending or known criminal charges against the defendant that will be disposed of by this agreement.

[As amended, effective September 1, 1990; May 1, 1998; as amended by Supreme Court Order 07-8300-29, effective December 10, 2007, as amended by Supreme Court Order No. 10-8300-028,

effective December 3, 2010.]